

DEBBIE JOHNSON
Claimant

RICHTER PALLET COMPANY
Respondent

UNKNOWN Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed claim including the August 10, 1994, preliminary hearing transcript before Administrative Law Judge George R. Robertson with the exhibits attached thereto.

ISSUES

- (1) Are the parties covered by the Kansas Workers Compensation Act?
- (2) Was claimant an employee of the respondent on the date of accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds that claimant has failed to prove by a preponderance of the credible evidence that she was an employee of the respondent within the meaning of the Kansas Workers Compensation Act on the date of accident.

Respondent company, located in Hanover, Kansas, was in the business of buying, recycling and reselling wood pallets. The respondent employed no persons in conducting this business but instead sold the pallets to individuals who, after completing the rebuilding of the pallet, would then sell them back to the respondent for resale. The respondent maintained no direction or control over the method or manner of doing the work. The only control maintained by the respondent was as to the end product or final result of the pallet reconstruction. Payment was made by the piece rather than by the hour with the respondent being responsible for deducting no taxes from the claimant's pay and also being responsible for furnishing no insurance benefits of any kind.

On June 22, 1993, claimant entered into a rental agreement wherein she and the respondent agreed that claimant would rent certain space from the respondent, in respondent's building, for the purpose of rebuilding pallets. This rental agreement is the only document describing the understanding between the respondent and the claimant. Claimant filled out no employment application, was required to go through no pre-employment physical, and provided no additional information to the respondent other than the above discussed rental agreement.

Claimant was not supervised by the respondent and was not given designated work hours. She was advised when inquiring of the respondent as to her work hours that she could come to work with "Al", her uncle who also had a similar relationship with the respondent. On June 23, 1993, claimant's first day at work, claimant fell down a flight of stairs suffering serious injury to her head and neck.

Claimant, in requesting that her medical bills be paid, alleges her relationship with the respondent was an employer/employee relationship and she should be covered by the Kansas Workers Compensation Act. The Appeals Board disagrees. Claimant, being under little or no supervisory control by the respondent and having only to be concerned with the end product or final result, was not an employee of respondent, but was instead an independent contractor.

An independent contractor is one, who in the exercise of an independent employment, contracts to do a piece of work according to his own methods and who is subject to his employer's control only as to the end product or final result of his work. Krug v. Sutton, 189 Kan. 96, 366 P.2d 798 (1961).

On the other hand, an employer's right to direct and control the method or manner of doing the work is the most significant aspect of the employer/employee relationship, although it is not the only factor entitled to consideration. An employer's right to discharge the workmen, payment by the hour rather than by the job, and the furnishing of equipment by the employer are also indicia of master-servant relationship. Jones v. City of Dodge City, 194 Kan. 777, 402 P.2d 108 (1965).

The Board finds it compelling that the respondent has never discharged anyone from this relationship and does not feel he has the right to discharge anyone. Claimant alleged she felt she could be discharged as the lease agreement specifies that this lease agreement may be terminated by either party by giving seven (7) days written notice. The Appeals Board does not agree with the claimant's interpretation of this language, finding it does not describe the termination of an employment situation but rather merely resembles a clause in a lease agreement allowing each party the right to terminate the agreement with appropriate notice.

While it is understood that the respondent did furnish certain equipment it was also the claimant's responsibility to provide certain equipment. The Appeals Board does not believe, based upon the totality of the evidence, that the furnishing of some equipment is sufficient to find an employer/employee relationship under these circumstances.

In Smith v. Brown, 152 Kan. 758, 107 P.2d 718 (1940) the Supreme Court entertained evidence that respondent paid claimant an hourly rate for services. The Supreme Court determined that this one aspect was not alone sufficient to indicate a right of control which the court felt determined the relationship between the parties. Here the Appeals Board finds that claimant, being under little or no supervision or control by respondent, and having only to be concerned with the end product or final result, was not an employee, but instead an independent contractor. Claimant's claim for benefits for this injury are denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the August 15, 1994 Order of Administrative Law Judge George R. Robertson, wherein the claimant was found to have failed to carry her burden of proving that she was an employee of the respondent within the meaning of the Kansas Workers Compensation Act, should be and is affirmed in all respects and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November, 1994.

BOARD MEMBER

DEBBIE JOHNSON

4

DOCKET NO. 183,158

BOARD MEMBER

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cc: Roger D. Fincher, Topeka, KS 66601-0797
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George R. Robertson, Administrative Law Judge
George Gomez, Director